IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

TUESDAY, THE 13TH FEBRUARY 2007 / 24TH MAGHA 1928

Tr.P(C).No. 294 of 2006()

OS.2/2003 of DISTRICT COURT, THALASSERY
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: PETITIONERS:
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1. SIVAKRISHNAN, S/O. GOVINDAN,
SECRETARY, KOTTAYAM THRIKKAIKUNNU MAHADEVA KSHETHRA SAMRAKSHANA SAMITHY TRUST, TELEPHONE MECHANIC, JIJIVIHAR, KOTTAYAM AMSOM, DESOM, THALASSERY TALUK.

2. M.V. GANGADHARAN, S/O.GOVINDAN NAMBIAR,
TREASURER, KOTTAYAM SREE THRIKKAIKUNNU MAHADEVA KSHETHRA SAMRAKSHANA SAMITHY TRUST, PENSIONER, SREENILAYAM, KOTTAYAM AMSOM, DESOM, KOTTAYAM MALABAR P.O., THALASSERY TALUK.

3. K. RAMADASAN, S/O. APPA, TRUSTEE,
KOTTAYAM SREE THRIKKAIKUNNU MAHADEVA KSHETHRA SAMRAKSHANA SAMITHY TRUST, AGRICULTURIST, SIVASAKTHI, KOTTAYAM AMDOM, DESOM, KOTTAYAM MALABAR P.O., THALASSERY TALUK.

4. K.K. DAMODARAN NAMBIAR,
S/O. GOPALAN NAMBIAR, TRUSTEE, KOTTAYAM SREE THRIKKAIKUNNU MAHADEVA SAMRAKSHANA SAMITHY TRUST, AGRICULTURIST, KALATHIL VEEDU, KOTTAYAM AMSOM, DESOM, KANATHUMCHIRA, KOTTAYAM MALABAR P.O., THALASSERY TALUK.

5. SHANKARA VARMA VALIYA RAJA,
S/O. VASUDEVAN NAMBOODIRI, TRUSTEE, KOTTAYAM SREE THRIKKAIKUNNU MAHADEVA SAMRAKSHANA SAMITHY TRUST, NO OCCUPATION, KIZHAKKE KOVILAKAM, KOTTAYAM AMSOM, DESOM, KOTTAYAM MALABAR P.O., THALASSERY TALUK.

6. SREERENJINIAMMA RAJA,
D/O.KOCHUMALU THAMPURATTI, TRUSTEE, KOTTAYAM SREE THRIKKAIKUNNU MAHADEVA SAMRAKSHANA SAMITHY TRUST, KOTTAYAM THEKKE KOVILAKAM, RAROTH AMSOM, KADAVOOR DESOM, THAMARASSERY P.O.,KOZHIKODE TALUK.

7. KERALAVARMA VALIYA RAJA,
S/O. RENJINIAMMA RAJA, TRUSTEE, KOTTAYAM SREE THRIKKAIKUNNU MAHADEVA SAMRAKSHNA SAMITHI TRUST, BUSINESS, KOTTAYAM THEKKE KOVILAKAM, RAROTH AMSOM, KADAVOOR DESOM, THAMARASSERY P.O.,KOZHIKODE TALUK.

8. RAJARAJAVARMA THAMPURAN,
S/O. SANKARAN NAMBOODIRI, TRUSTEE, KOTTAYAM SREE THRIKKAIKUNNU MAHADEVA SAMRAKSHANA SAMITHY TRUST, AGRICULTURIST, KOTTAYAM KIZHAKKE KOVILAKAM, KOTTAYAM AMSOM, DESOM, KOTTAYAM MALABAR P.O., THALASSERY TALUK.

9. SUBHADRAMMARAJA, D/O.SANKARAN NAMBOODIRI
TRUSTEE, KOTTAYAM SREE THRIKKAIKUNNU MAHADEVA SAMRAKSHANA SAMTHY TRUST, NO OCOCUPATION, KIZHAKKE KOVILAKAM, KOTTAYAM AMSOM, DESOM, KOTTAYAM MALABAR P.O., THALASSERY TALUK.

10. RAVIVARMA RAJA, S/O.SANKARAN NAMBOODIRI,
TRUSTEE, KOTTAYAM SREE THRIKKAIKUNNU MAHADEVA SAMRAKSHANA SAMITHY TRUST, KIZHAKKE KOVILAKAM, KOTTAYAM AMSOM, DESOM, KOTTAYAM MALABAR P.O., THALASSERY TALUK.

11. SATHEESHAN, S/O. SANKARAN NAMBOODIRI,
TRUSTEE, KOTTAYAM SREE THRIKKAIKUNNU MAHADEVA SAMRAKSHANA SAMITHY TRUST, NO OCCUPATION, KIZHAKKE KOVILAKAM, KOTTAYAM AMSOM, DESOM, KOTTAYAM MALABAR P.O., THALASSERY TALUK.

12. V.H. SACHIDANANDAN,
S/O. ACHUTHAN NAMBIAR, TRUSTEE, KOTTAYAM SREE THRIKKAIKUNNU MAHADEVA SAMRAKSHANA SAMITHY TRUST, BANK EMPLOYEE, KALATHIL VEEDU, KOTTAYAM AMSOM, DESOM, KOTTAYAM MALABAR P.O., THALASSERY TALUK.

13. V.C. SASHEENDRAN, S/O.SANKARAN NAMBIAR,
TRUSTEE, KOTTAYAM SREE THRIKKAIKUNNU MAHADEVA SAMRAKSHANA SAMITHY TRUST, AGRICULTURIST, SHANKAR NIVAS, KUTHUPARAMBA AMSOM, NARAVOOR DESOM, KUTHUPARAMBA P.O., THALASSERY TALUK.

14. K.K. SARASAKSHAN, S/O. RAMADASAN,
TRUSTEE, KOTTAYAM SREE THRIKKAIKUNNU MAHADEVA SAMRAKSHNA SAMITHY TRUST, PHOTOGRAPHER, BHAVANA PHOTOS, KOTTAYAM AMSOM, DESOM, KOTTAYAM MALABAR P.O., THALASSERY TALUK.

15. VEERAVARMA RAJA,S/O.SREEREJINIAMMA RAJA,
TRUSTEE, KOTTAYAM SREE THRIKKAIKUNNU MAHADEVA
SAMRAKSHANA SAMITHY TRUST, KOTTAYAM THEKKE
KOVILAKAM, RAROTH AMSOM, KADAVOOR DESOM,
KOZHIKODE TALUK, THAMARASSERY P.O.

BY ADV. SRI.P.N.KRISHNANKUTTY ACHAN(SR.)
SRI.K.MOHANAKANNAN

RESPONDENTS:
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1. K. KUMARAN MASTER, S/O.KUNHI RAMAN,
TRUSTEE, D/O. SANKARAN NAMBOODIRI, TRUSTEE,
KOTTAYAM SREE THRIKKAIKUNNU MAHADEVA SAMRAKSHANA
SAMITHY TRUST, RETIRED TEACHER, TOP HOME,
MANGATTIDAM AMSOM, DESOM, MANGATTIDAM P.O.,
THALASSERY TALUK.

2. C. GANGADHARAN, S/O. KUNHIKANNAN,
TRUSTEE, KOTTAYAM SREE THRIKKAIKUNNU MAHADEVA
SAMRAKSHANA SAMITHY TRUST, RETIRED TEACHER,
C.K. HOUSE, KUTHUPARAMBA AMSOM, MOORIYAD DESOM,
MOORIYAD P.O., THALASSERY TALUK.

BY ADV. SRI.B.KRISHNAN
SRI.R.PARTHASARATHY
SRI.A.RADHAKRISHNAN NAIR

THIS TRANSFER PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 13/02/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON I.A.NO.3411/06 IN TR.P.C.NO.294/06

DISMISSED.

13.2.2007. SD/- KURIAN JOSEPH, JUDGE.

SD/- K.T.SANKARAN, JUDGE.

TGS

KURIAN JOSEPH & K.T.SANKARAN, JJ.

Tr.P.C.No.294 of 2006

Dated 13th February, 2007.

J U D G M E N T

Sankaran, J.

On 11th August, 2006, we passed an order in I.A.No.2349/06 in R.F.A.No.382/06, which reads as follows :-

> "Notice.
> There will be an interim stay of passing the final decree and of finalising the scheme. The interim arrangement made as per the order dt. 31.3.2005 and mentioned in paragraph 147 of the judgment will continue with the following modification:-
>
> That the Commmissioner shall oversee the maintaining of records, accounts and registers as mentioned in sub paragraph (4) of paragraph 147 of the judgment and submit a report to the court below. The court below shall be free to pass appropriate orders for the administration of the affairs of the Trust and in implementing the interim arrangement dated 31.3.2005 after hearing the parties.

R.F.A.No.382 of 2006 was filed by the petitioners herein challenging the judgment and decree in O.S.No.2 of 2003 on the file of the Court of the District Judge of Thalassery. This Transfer Petition is filed seeking transfer of the final decree proceedings in O.S.No.2 of 2003 to any other District Court.

2. Thereafter, in I.A.2349/06, another order dated 17.10.2006 was passed, which reads as follows :-

> "Advocate Sri.K.Shrihari Rao takes notice for R24. Service is complete. Call for the lower court records. To be listed for hearing during the second week of November, 2006. In the meanwhile, appropriate steps could be carried on, as envisaged

by order dated 11.8.2006."

3. In terms of the order dated 11.8.2006, the learned District Judge passed order dated 22.8.2006 on the XIIth report, issuing certain directions. Another order dated 29.7.2006 was passed by the learned District Judge issuing directions to the Commissioner. Again, on 14.11.2006, the learned District Judge passed an order in I.A.No.1840/06, which reads as follows :-

> "Heard. For the proper management Commissioner is permitted to take over entire and full management of the Trust and the employees of the Trust shall function under the supervision of the Commissioner only. Records available with the parties/employees shall be submitted to the Commissioner through Court. Any act/omission/misconduct of the Trustees/employees towards the Commission is a matter to be viewed seriously since the same would amount to interference with administration of the Justice as the Commissioner appointed is an officer of Court. Issue carbon copy forthwith. For detailed hearing 20.11.2006."

4. We are of the view that the order dated 14.11.2006 passed by the learned District Judge is against the aforesaid orders passed in the appeal and practically it would nullify the orders passed by this Court. Though the prayer in the Transfer Petition is to transfer the proceedings to any other District Court, we are not inclined to allow that prayer on the ground that the learned District Judge has passed certain orders which are incorrect. Therefore, the prayer for transfer of the case is

rejected. However, the order dated 14.11.2006, being contrary to the orders passed by us in the appeal, is set aside, exercising the jurisdiction of this Court under Article 227 of the Constitution of India. Learned District Judge is free to pass appropriate orders to ensure that the Commissioner is not obstructed in carrying out his duties in implementation of the order passed by us on 11.8.2006 and the subsequent orders passed by the learned District Judge on 22.8.2006 and 29.7.2006.

The Transfer Petition is disposed of as above.

KURIAN JOSEPH, JUDGE.

K.T.SANKARAN, JUDGE.

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KURIAN JOSEPH & K.T.SANKARAN, JJ

L.A.A. NO. OF 2004

J U D G M E N T

Dated 13th February, 2007.